IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.2761 OF 1997

1. Shri Sudhakar Krishna Sawant,)
2. Shri Prakash Mahipati Patil,)
3. Shri Sahadeo Bapu Shinde,)
4. Shri Tanaji Pandurang Patil,)
5. Shri Umesh Abasaheb Desai,)
6. Shri Rajaram Kerba Patil,)
7. Shri Vishnu Shripati Parit,)
8. Shri Rajendra Krishna Kumbhar,)
9. Shri Shrikant Bapu Desai,)
10. Shri Kashinath Gunda Lambe,)
11. Shri Yashwant Tukaram Kamble,)
12. Shri Vijaykumar Mahadeo Desavale,)
13. Shri Sanjay Gangadhar Kadgave,)
14. Kum.Kusum Dattatray Jadhav,)
15. Shri Krishnant Pandit Pujari,)
16. Shri Mangu Balu Shelke,)
17. Shri Suresh Baburao Yedurkar,)
18. Shri Sunil Rajaram Posugade,)
19. Miss Usha Prakash Dhanwade,)
20. Smt.Shantadevi Krishna Kolekar,)
21. Sau.Vanita Kumar Siddhnale,)
22. Sau Helan Shashikant Shiturkar,)

23. Shri Vilas Narayan Powar,)

24. Shri Dattatray Shivajirao Talap,)

25. Shri Prashant Krishnarao Kulkarni,)

26. Shri Chandrakant Shivgonda Patil,)

27. Shri Balkrishna Maruti Kamble,)

28. Shri Babaso Anna Solankure,)

29. Shri Sanjay Tukaram Tonpe,)

30. Sau.Rajmahendri Basgonda Swami,)

31. Shri Tanaji Namdev Dawang,)

32. Sau. Sarita Prakash Sutar,)

33. Shri Suresh Bhagwanrao Jadhav,)

34. Shri Mohan Shankarrao Chavan,)

35. Shri Mahadeo Keshav Kumbhar,)

36. Shri Namdev Ganapati Chougule,)
all aged adult, working as)
Primary Teachers with Respondent)
No.3, At & Post Kolhapur,)
Karveer, Dist : Kolhapur.)..Petitioners

Vs.

1. The State of Maharashtra,)
through the Addl.Govt.Pleader,)
High Court, Bombay.)

2. Kolhapur Municipal Corporation,)
Kolhapur, through the Municipal)
Commissioner having office at)
Shivaji Chowk, Kolhapur,)

3. Primary Education Board,)
Kolhapur Municipal Corporation,)
Kolhapur, through its)
Administrative Officer,)
having office at Chhatrapati)
Shivaji Market, Shivaji Chowk,)
Kolhapur.)

4. The Dy.Director of Education,)
Maharashtra State, Kolhapur.)..Respondents

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Shri S.S.Pakale for the petitioners.

Shri R.M.Patne, AGP for respondent Nos.1 and 4.

None present for the respondent Nos.2 and 3, though served.

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CORAM : R.M.S.KHANDEPARKAR &
SMT.R.S.DALVI, JJ.

DATED : 24TH MARCH, 2006

ORAL JUDGMENT : (Per R.M.S.Khandeparkar, J)

1. Heard the learned advocate for the petitioners, and the learned Additional Government Pleader for the respondent Nos.1 and 4. None present for the respondent Nos.2 and 3, though served. Perused the records.

2. The petitioners herein had sought relief in the nature of quashing of recruitment process which was sought to be initiated by the respondent No.2 pursuant to the advertisement dated 1st April, 1997 as well as for regularisation of the services of the

petitioners as the Primary School Teachers. The learned advocate for the petitioners has fairly conceded that with the passage of time the relief in the nature of prayer clause (a) has been rendered infructuous, and therefore, has submitted that the petition has to be considered only in relation to the relief in the form of prayer clause (b), which relates to the claim for regularisation of the petitioners in the posts of Primary School Teachers in the service of the respondent No.2.

3. Few facts relevant for the decision are that pursuant to the advertisement issued by the respondent No.2 in May, 1993 inviting applications for 37 vacant posts of Primary School Teachers, the petitioners had applied for the same and after undergoing the regular process of answering the written examination as well as oral test before the selection committee duly constituted under the relevant provisions of law, were selected and appointed as the Primary School Teachers in the service of the respondent No.2 by the order dated 30th August, 1993. Their appointments were in terms of the Bombay Primary Education Act, 1947 read with the Bombay Primary Education Rules, 1949. Initially, the respondent No.2 had sought to create posts for 37 Primary School Teachers on fixed payment

of Rs.900/- per month. However, on realisation that no such scale can be awarded to the employees occupying the posts of Primary School Teachers, pursuant to the resolution by the School Board, the respondent No.2 made necessary budgetary provision with effect from 1993-94 in order to meet the expenses for the salary of 37 Primary School Teachers from that year and thereafter, also granted necessary sanction under the letter dated 7th September, 1996 for creation of such 37 posts, and further for continuation of the appointments of the petitioners who were selected for such posts under the letter dated 1st September, 1996. However, after such sanction was obtained, the Council proceeded to issue fresh advertisement calling the applications for filling up 100 posts of Primary School Teachers and advertisement in that regard was issued in the month of April, 1997. As the petitioners apprehended threat of discontinuation of their services in the post of Primary School Teachers, they made various representations to the different authorities and as they did not favourable response in that regard, they filed the present petition. While issuing the rule on 25th July, 1997, this Court ordered maintenance of status quo in relation to the services of the petitioners by granting stay to the order of 3rd May,

1997 by which the petitioners' services were sought to be terminated.

4. It is the contention on behalf of the petitioners that subsequent to the filing of this petition and grant of interim relief, the petitioners have been continued as the Primary School Teachers in the various schools under the respondent No.2 and they have been subjected to the payment of regular salary granting regular increment in accordance with the provisions of law. In the circumstances, therefore, the learned advocate for the petitioners drawing attention to the various resolutions and the orders passed by the respondents and placing reliance in the decision of the Division Bench of Karnataka High Court in the matter of **State of Karnataka & Anr. v. H.Ganesh Rao & Ors., reported** in 2001 (4) LLN 337 has submitted that the petition deserves to be allowed in terms of prayer clause (b). He has further submitted that the fact that the petitioners were selected by the selection committee duly constituted under the provisions of law by following the regular procedure which is required to be followed in case of filling up of a permanent vacancy in respect of the petitioners and further the petitioners having granted regular increment and payment of salary and the fact that 37

posts which were sought to be created under the Resolution dated 20th June, 1992 and duly approved by the Government under the letter dated 7th September, 1996 were as per the actual requirement of the teachers in accordance with the policy of the Government, the claim of the petitioners for regularisation in the service with the respondent No.2 is well justified. He has also drawn our attention to the fact that inspite of due service of the notice of the petition on the respondents, the respondent No.2 Council has not contested the proceedings and has also not disputed the facts stated in the petition.

5. The materials on record apparently disclose that the respondent No.2-Council had arrived at a clear decision about the need of 37 primary school teachers, in view of the fact that the government policy required at least one teacher for each division of the students in the primary schools. Considering the same, the Council had resolved in its meeting of 20th June, 1992 that there were 78 primary schools under the administration of Council wherein there were 580 divisions of the students. However, there were only 543 primary school teachers employed on that date to conduct the classes in those 580 divisions in 78 primary schools. Consequently, there were 37

vacancies for the posts of primary school teachers in order to enable the Council to provide one teacher for each of the 580 divisions. Consequently, it was decided by the Council to create the said 37 posts and to appoint primary school teachers in order to comply with the necessary government policy of providing one school teacher for each division. The Government under letter dated 7th September, 1996 did approve the said proposal. However, the Council was asked to bear expenditure for such posts from its own funds without casting the burden on the Government to grant any aid in that regard. The materials on record clearly reveal that there was not only the need of 37 teachers in the year 1992 for the respondent No.2 to comply with the requirement of government policy of providing one school teacher for each division but such need continued in the year 1993 and thereafter. It is also a matter of record that the petitioners were selected for appointment as the primary school teachers after following the procedure prescribed under the law and they were selected by the selection committee duly constituted under the provisions of law. This apparently discloses that the selection of the petitioners for 37 posts of primary school teachers was in relation to the permanent vacancies for 37 posts duly approved by the Government and there is

continuous need for such 37 primary school teachers to meet the requirement of the government policy in relation to the need of one school teacher for each division. It is nobody's case that after 1996, there was reduction in the number of division of the students in the schools under the administration of the respondent No.2. Obviously, therefore, the need for 37 primary school teachers was from the year 1993 and the same was continued in the year 1996 and even thereafter including the current year. Obviously, therefore, apart from the selection of the petitioners being for filling up permanent vacancies of 37 posts of primary school teachers, the selection having been done in accordance with the provisions of law and the need for continuation in their service being clearly established by the Government under the letter dated 1st September, 1996, the petitioners are justified in claiming regularisation of their services in the posts for which they were selected and appointed by the letter dated 30th August, 1993. The learned advocate for the petitioners is also justified in drawing our attention to the decision of Karnataka High Court in **H. Ganesh Rao's case (supra).** The Division Bench in the said case, after considering the fact that the typists and assistants in the Commercial Taxes Department were initially appointed for a fixed period

but their selection being done by following the regular procedure and further their appointments were extended from time to time and some of them had put up more than 15 years of service, had held that the appointments having been made with full knowledge and sanction of the government and being not tainted by corrupt or extraneous considerations and the vacancies also continued to exist, there was legitimate demand for regularisation of those appointees on the posts on which they were appointed. In the facts and circumstances of the case in hand, it is nobody's case that the selection of the petitioners was tainted with any corrupt or extraneous considerations. That apart, as already observed above, the need for these posts still continues and it is in terms of the requirement of the government policy. The petitioners are, therefore, justified in contending that their services should be regularised in the posts on which they were appointed under the letter dated 30th August, 1993.

6. In the result, therefore, the petition partly succeeds and the rule is made absolute in terms of prayer clause (b), with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(SMT.ROSHAN DALVI, J)